

As the evil is one which cannot be reached by official medical experts, the question is, how can it be uprooted? In my opinion the solution of the problem is in the hands of the physicians themselves, acting through their medical societies.

The principal thing is to produce in court only honest opinions and to eliminate interest, prejudice, and other unworthy motives. This can be accomplished if medical societies will, by the adoption of strict by-laws, provide for the appointment of a committee of experts and require every physician who is to be called as a witness, to lay the case in advance before such committee. By such means the experts on opposite sides would be brought face to face before the committee for consultation and examination, after which both would be free to testify. If they are honest they will listen to the advice of the committee precisely as they would listen to that of a consultant in any case.

With honest and conscientious witnesses (with which the profession abounds) the probabilities are that the consultation will bring about unanimity of opinion, and there will be no conflict in court.

In the case of experts called to give opinions on a hypothetical case or upon the result of an examination in connection with assumed facts, the by-laws could provide that such an expert should always consult with the committee, both as to facts appearing upon the examination and as to the hypothetical case. If, after consultation with the committee, there should still be difference of opinion, such difference would at least be an honest one.

It may be objected to this course that courts can, by process of subpoena, force medical experts to testify. The answer is that no court can force any medical expert to give an opinion until he has one, and he is not required to have one until he has exhausted all legitimate means of forming a correct one.

Should physicians outside of the society refuse to appear before the committee of experts before testifying, such refusal of itself would probably be sufficient to impeach their testimony and render it unworthy of belief by a jury. Certain it is that as between an expert witness who gives an opinion formed after a full study of authorities and consultation with eminent associates, and one who refuses to consult and sets himself up against the consensus of opinion of his brothers, a jury should have little difficulty in determining where the truth actually lies.

Official medical experts appointed by the court on motion of either party and chosen from such a committee of experts would be of great benefit in arriving at the truth in obscure cases. To that extent I favor the appointment of official medical experts; but, as already explained, the evil complained of cannot be eradicated except by some drastic action by the profession itself.

In the last analysis, the opinion of a medical expert is of little consequence unless the jury has confidence in him and is convinced of his honesty and sincerity. Where it appears that a physician is interested in the result, or is woefully ignorant, as too frequently appears, or has not prepared him-

self sufficiently for the ordeal of cross-examination, or where for any reason the jury may readily conclude that he is not fair, his testimony carries little weight. If, to oppose such a witness, either party should call men of standing who have not hesitated to consult fully with their fellows in the profession before attempting to decide, by their mere opinions, delicate questions of fact involving serious consequences, it is plain that juries whose only desire is to arrive at the truth, would never hesitate to condemn the expert who, for his own personal ends, sets up his opinion in opposition to that of the combined medical fraternity.

My conclusion is that medical experts, while they would undoubtedly assist in remedying the evil, would not eradicate it, but that great good might be accomplished by putting in force some such plan as above outlined.

THE MEDICAL EXPERT IN AMERICAN JURISPRUDENCE.*

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There has been a growing sentiment in American courts of justice that the testimony of the expert witness must be received with a conscious discount and reserve. It is widely accepted that the abuses which attend the offering of expert testimony are many and flagrant. But it is equally obvious that these abuses are as clearly the outgrowth of the present method of procedure as they are of the mental obliquity of the witnesses who are called. For more than a generation the testimony of the medical expert has been a purchasable commodity. From a factor whose learning and experience should prove a distinct assistance to the court in determining the adjudication of technical difficulties, the medical expert has, by virtue of the false position he has been brought to occupy, become an object of ridicule and contempt.

There are several impressive reasons for this: Through the present method of choosing the expert witness, he is at once the victim of bias and becomes an advocate for the side that employs and pays him. Experts are not selected chiefly on account of eminent fitness or special training in the subject on which testimony is to be offered, but as to whether they shall prove to be strong partisans and clever defenders of the side which employs them and of which for the time being they are a willing appanage. Such a system of selecting the expert and the coarse and frequently incompetent methods of counsel in direct and cross-examination, have created an aversion among scholarly professional men for appearance on the witness stand. The result is that the best talent is rarely obtainable and the choice must lie amongst duller minds, less sensitive to the harsh usages of a court of law.

We may assume that counsel is not supposed to have an intimate acquaintance with the technical knowledge of the expert whose evidence he is seeking to develop. But no one who has had experience in court has failed to note the awkward

* Read before a joint meeting of the Bar Association of San Francisco and the San Francisco County Medical Society, October 13, 1914.

efforts counsel is oftentimes guilty of in interrogating the witness and how the important questions necessary to draw forth a truthful and illuminating exposition of the case are never asked. It would appear at times as though court, counsel and witness, whose chief function should be to elucidate to the jury the simple truths of science, had failed utterly to achieve that end and purpose. Are these stupidities the inevitable concomitants of a trial at law or are they the impedimenta which a decadent jurisprudence has helplessly carried in its course? We have a right to require the sagest learning and highest qualifications in the expert witness; what have we a right to expect in the intelligence of the barrister who interrogates him?

Neither the practice of law nor the practice of medicine need ever depart far from the realms of common sense. Are not our courts the forums of justice? If this be true, then in the taking of expert evidence we must insist that conditions are permitted to prevail which shall keep inviolate the plain and obvious facts of science and not enshroud their simple relating in the befogging and boisterous controversies of partisans.

Under the present system of selecting the expert witness no restrictions as to qualifications or the number of those who shall be called is prescribed by law. It is therefore manifest that the number of so-called experts who receive their compensation at their own appraisal from the side employing them, is limited only by the capacity of the purse of the employer. This fact and the startlingly opposite testimony of professional men of equal standing not uncommonly converts a trial into a travesty from which neither court, counsel nor jury can extricate it.

Other evils complicate and prolong the action and prove subversive of the ends of justice. One of these is the lengthy and involved "hypothetical question," the answer to which has been prearranged before the question is asked.

Another is the custom—once prevailing, but I trust, rapidly becoming obsolete, of opposing counsel to anger, disconcert and unhorse the witness by every artifice of smart and offensive aggression which could be employed. No physician or surgeon who values his self-respect or cherishes the dignity which years of learning, experience and culture have brought to him, will voluntarily subject himself to such an ordeal of abuse for any compensation which can be named.

The expert witness should not only be a scholar in the special learning he is called to reveal to the court and explain to jury, but he should be graciously shielded and encouraged, so that his testimony may be couched in clear language and be most informing. A very eminent jurist writing on this subject has said: "Scientific opinion to be of controlling value can be given only under conditions of mental repose. The haggling sharp interruptions, uncalled for wit, insolent comment and other too common features of important civil and criminal trials are not such conditions. While they put some witnesses on their mettle, they throw the majority and the more competent into a state

of mind in which all sorts of stupidities may be expected."

If the vice of prejudice is permitted to dominate the selection of the expert witness, then a prejudiced and superficial opinion need not surprise us. Nothing can rescue the "expert" from this obliquity whose measure of integrity is the price paid for his time in court. Such a witness invites contempt; he inspires abuse; he arouses the belligerency of counsel and incites to disconcerting and embarrassing scenes, utterly unworthy of the respect due to members of honorable professions. It is common knowledge that many of the most distinguished physicians and surgeons in America refuse to appear in court because the method of choosing the expert witness and the manner of his examination on the stand, are what they are in this country.

In Germany the appointment is made by the court and the expert is required to appear whenever called by a judge. A penalty is attached for disregarding the summons, and the commonwealth provides a moderate fixed compensation together with expenses for appearance and testimony in court. The medical expert in Germany may therefore be regarded as an officer of the court; and the same relation exists in most all of the other continental countries. It is regarded an honor and distinction to be thus designated, and there is attendant on the office every courtesy and dignity to which its responsibilities should entitle it. But the utmost care is observed in the choice of physicians and surgeons as official experts that only men of known special scholarship and highest training and personal integrity are selected.

In England and her colonial possessions and in the United States to a large extent, the expert is selected by counsel and the court is not consulted.

If expert testimony is to continue to be heard in American courts, then it is apparent that the selection of the expert must be hedged about by such appropriate measures as shall ensure the selection of men of competent ability and devoid of bias. It has been held sturdily by members of the bar that no man can be found who is quite free from bias; that the men who are called are usually competent as experts; and that no member of the bar would call a man as expert about whose qualifications there could be any question of competency. Yet we have seen on a number of occasions obstetricians, dermatologists and genito-urinary surgeons taking the stand as expert alienists to pass on the sanity of a homicide.

We have known "experts" celebrated for their flexibility of intelligence to be called by the state, which failing to measure up to the stipulated fee, these same "experts" became an equally ready and willing succor to a struggling defense. Must we continue to endure such ineptitudes in jurisprudence without one restraining word from the court to mitigate the travesty? We are answered that the rules of evidence do not contemplate that the court should pass on the credibility of a witness beyond his statement of fact or opinion.

Litigants must be left free to select whom they may to sustain their argument. Counsel addresses its energies toward the choice of witnesses whose testimony shall add the greatest weight and emphasis to their cause.

Who then may be properly designated as expert on a question of medical science? Is it not the man who possesses liberal learning, high ethical character, scholarship and extended training in a special branch of medicine or surgery and a reputation as a studious and conscientious practitioner? Such men may be found in every populous community in this country. If they are rarely seen on the stand as experts, it is because their altruism and sense of humor can find a more admirable expression elsewhere. And until our laws governing expert testimony are so changed as to foster a frank, honest, dependable scientific opinion, those gentlemen competent to give it will be increasingly conspicuous by their absence from the courtroom.

Members of the bar would be surprised could they know how widespread and deepseated is the diffidence and aversion in the medical profession toward appearance in court to offer expert evidence. If the so-called "expert witness" has brought his evidence into such contempt as to draw forth the deprecating comment of a Supreme Justice of the United States, we may well pause to enquire at whose instance is this incompetent called into the presence of the learned court? Who is responsible for his appearance and his banalities in the halls of justice? At whose command does this pariah of science become the jester to enliven the jaded officers of a drowsy court, or incite the caustic philippics of a scoffing bar?

We must confess to a frank impatience with the ready criticism of those who should be most interested in the fairness and integrity of the expert witness, and most ready to establish practical conditions which shall effectually shelter the taking of expert evidence. If the officers of the court in the commonwealth of California are really sincere in their desire to regulate the taking, and elevate the quality, of expert testimony, then their opportunity to initiate these reforms, by co-operating with those learned professions called upon by them to give expert evidence, was never more golden.

We are firmly convinced that no bill can be enacted into a law governing expert evidence which does not include every profession and interest which may be called upon to offer expert opinion. The relations of this witness to the court must be so free from possible bias as to practically constitute him an officer of the court. If the selection of the expert shall be made by the court from a list of qualified men submitted by the various scientific bodies represented, the question of competency will have been fairly established. If the state shall define the compensation of the expert, he will insofar become immune from the charge of commercialism.

Should either the plaintiff or defendant desire to call experts additional to those selected by the court, that privilege should be provided for, but their status and compensation must be considered independently. No act should pass which

shall not impartially protect to the fullest the just rights and interests of litigants.

Many of the states of the union have made repeated efforts to pass bills governing the appointment of the expert witness. Some of the states, like our own, have succeeded in getting more or less admirable bills through one of the houses of the legislature. Those in California who for more than five years have labored sedulously for these reforms have faith that in spite of an incredible apathy we shall in the end succeed.

Large gains have been made in arousing the various scientific professions to the conviction that expert evidence, to have a value in court, must be given under proper scientific conditions; that these conditions must be established and maintained by those qualified to interpret them; and that through concerted action, by which the interests of all shall be conserved, we may confidently co-operate with the bar in securing such legislation as shall make a *fait accompli* of this most needed reform.

THE CURE OF SYPHILIS.*

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It is not the purpose of this paper to present a startling new remedy for syphilis, nor to report any spectacular results of treatment. Its object is rather to emphasize the fact that the treatment of the disease as carried on in a deplorably large percentage of the cases has been utterly inefficient.

It is most astonishing how widely diffused are false ideas concerning syphilis. As a member of the California State Board of Medical Examiners the writer has taken part in several hundred oral examinations the past year. The applicants were all individuals licensed prior to 1901 in some other state in the Union and every section of the country was represented. The absolute ignorance displayed by most of them and false ideas held by many others concerning syphilis was something most astonishing, particularly in view of the fact that there has been so much publicity given the subject in recent years in the lay press as well as in medical publications. Of course, it is true that most of the applicants were individuals who had either failed in their practice in their own states or had left on account of poor health,—and for these reasons, as well as others, had not kept abreast of the times. But we must remember that these licentiates, as well as the ever numerous illegal practitioners, do not hesitate to assume the responsibility of taking full charge of and guiding these patients through the course of their lues and advising them as to the future,—and to the average layman all "doctors" are alike.

The past few years have seen the development of valuable laboratory aids to diagnosis and also of a remarkable remedy and a successful plan of treatment whereby the salvarsan and mercury are given together. Notwithstanding this, it is becoming more and more apparent that there are

* Read before the Nevada State Medical Association, October, 1914.